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such insurance is collateral security for debt, and seller must give credit to buyer for any amount collected thereon, and when exceeding debt pay residue to buyer, whether the insurance be of property, or only seller's insurable interest.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 795.]

3. Sales (§§ 87 (1)*, 357 (1)*)—Contract to Insure—Presumption.—Where contract between seller and buyer contains a covenant respecting insurance, insurance taken out while such contract is in force will be presumed to have been effected in pursuance of the contract, except upon evidence to the contrary.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 80.]

4. Appeal and Error (§ 843 (1)*)—Questions Not Reviewed—Reversal on Other Grounds.—Where a case is reversed on certain grounds, it is unnecessary to consider or pass upon other assignments of error upon questions not likely to arise on a new trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 538.]

Error to Corporation Court of Hopewell.

Action by the Christo Manufacturing Company, Incorporated, against Camp & Meehl. Judgment for plaintiffs, and defendant brings error. Reversed and remanded.

Robert G. Hudley, of Hopewell, and *C. H. Morrisette*, of Lexington, for plaintiff in error.

N. C. Manson, Jr., of Lynchburg, for defendants in error.

MOPSIKOV v. COOK.

March 21, 1918.

[95 S. E. 426.]

1. Evidence (§ 314 (1)*)—Hearsay—Admissibility—Connecting with the Defendant.—In a slander action for alleged statement that plaintiff was a negro, plaintiff's recital that his nine year old daughter said to him, "They say I am a nigger," and he said they would be made to prove it, was inadmissible, being purely hearsay not connected with the defendant and highly prejudicial.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 49; 9 Va.-W. Va. Enc. Dig. 279.]

2. Libel and Slander (§ 103*)—Evidence—Admissibility—Statements of Defendant's Minor Daughter.—Admission in a slander action of testimony of plaintiff's minor daughter that defendant's little girl called her a "nigger doll" was reversible error; such statement not being made or caused to be made by defendant.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 279.]

3. Parent and Child (§ 13 (1)*)—Torts of Child—Parent's Liability.—The relationship of father and child does not make the defend-

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ant in a slander action legally responsible for the tortious statement of his minor daughter.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 34.]

4. Libel and Slander (§ 124 (7)*)—Trial—Instructions—Damages—Malice.—An instruction that, if the defendant did not originate the slander, such should be considered in mitigation of damages, but failing to note that repeating of a slander known to be false is equally malicious, was correctly refused.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 297.]

5. Trial (§ 194 (14)*)—Instructions—Invasion of Province of Jury—Weight and Sufficiency of the Evidence.—An instruction that, if defendant did not originate the slander, such should be considered in mitigation of damages, being on the weight and sufficiency of evidence, is an invasion of the province of the jury.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 734; 9 Va.-W. Va. Enc. Dig. 296.]

6. Trial (§ 191 (5)*)—Instruction—Invasion of Province of Jury—Assuming Fact.—An instruction in an action for slander which plainly referred to the jury the questions of fact whether defendant used the words charged in the declaration and whether he used them “in bad faith with malice” did not assume that defendant used such words and was proper.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 730; 9 Va.-W. Va. Enc. Dig. 296.]

7. Libel and Slander (§ 124 (4)*)—Actions—Instructions—Construction of Defamatory Language.—To an instruction that, if defendant stated that plaintiff, a white man, was a negro, such words are usually construed as insults, and tend to violence and breach of peace, it cannot be objected that the words were used in other than usual meaning, where defendant admits use with common meaning.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 296.]

8. Libel and Slander (§ 89 (1)*)—Pleading—Special Damage—Words Actionable Per Se.—The false statement by defendant that plaintiff was a negro is actionable per se under the statute, and no averment or proof of special damage is necessary and plaintiff may recover upon proof of general loss of business.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 280, 281.]

Error to Hustings Court of Portsmouth.

Action by Benjamin E. Cook against Jacob Mopsikov. Judgment for plaintiff, and defendant brings error. Reversed, and new trial granted.

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Tazewell Taylor and J. L. Broudy, both of Norfolk, for plaintiff in error.

Richard J. Davis, of Portsmouth, *Wolcott, Wolcott, Lankford & Kear* and *John W. Reynolds*, all of Norfolk, for defendant in error.

WALKER *v.* PENICK'S EX'R.

March 21, 1918.

[95 S. E. 428.]

1. Insurance (§ 585 (1)*)—Life Insurance—Interest of Beneficiary.—A life insurance policy issued on the 10-payment plan provided that the insured might change the beneficiary with the approval of the company's officers; that after the policy had been in force for three years cash loans could be made thereon to a certain amount; that from any sum payable under the policy the unpaid premiums and indebtedness of the insured were to be deducted. The insured paid the first seven premiums in advance, and then borrowed on the policy a sum sufficient to pay the three last premiums, after which he gave a promissory note covering such indebtedness; the note as well as the policy providing that it should be a first lien on the policy. On the death of the insured, the executor paid the note, and the beneficiary under the policy brought suit against him for the face value of the note, on the theory that it had been paid out of her property. Held that, her interest being a mere expectancy before the death of the insured, she had no right to the gross face of the policy, but only to the net amount after the indebtedness was paid; it being within the power of the insured to make himself the beneficiary to the extent of the indebtedness.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 356, 357.]

2. Insurance (§ 585 (1)*)—Right of Beneficiary—Time of Vesting.—Where an insurance policy gives the insured the arbitrary right to change the beneficiary at will, the beneficiary has no estate of any kind in the policy during the lifetime of the insured, but a mere expectancy; the right of the beneficiary becoming vested only on the death of the insured.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 356, 357.]

3. Fraudulent Conveyances (§ 114*)—Payment of Debts—Right of Debtor.—Where creditors will not be prejudiced thereby, every man may, by act inter vivos or by will, appropriate his property to the payment of his debts in any way he may see fit.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 552.]

Error to Circuit Court, Halifax County.

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.